

1 \*E-Filed: September 4, 2014\*

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NOT FOR CITATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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TUSCANY INVESTMENTS LLC,

No. C13-04185 HRL

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Plaintiff,

**ORDER GRANTING DEFENDANT'S  
MOTION FOR LEAVE TO AMEND  
CROSS-CLAIM**

13

v.

**ORDER EXTENDING FACT  
DISCOVERY CUT-OFF DEADLINE  
TO SEPTEMBER 30, 2014**

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DAIMLER TRUCKS NORTH AMERICA  
LLC; et al.,

**ORDER VACATING SEPTEMBER 9,  
2014 HEARING**

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Defendants.

[Re: Docket No. 67]

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In September 2013, Tuscany Investments LLC filed suit against Daimler Trucks North America LLC and Winnebago Industries, Inc. for breach of warranty in violation of the federal Magnuson-Moss Warranty Act and Colorado law in connection with Plaintiff's purchase of a \$381,000 recreation vehicle. On March 18, 2014, Plaintiff filed an amended complaint, adding Lippert Components, Inc. as a defendant. On June 25, 2014, Winnebago notified the other parties that it intended to file an amended cross-claim, adding Lippert as a cross-defendant. Lippert did not stipulate to the filing of the amended cross-claim. On July 24, 2014, Winnebago filed the present Motion for Leave to Amend Cross-Claim. Dkt. No. 67. The motion is deemed suitable for determination without oral argument. The September 9, 2014 hearing is vacated. Civ. L.R. 7-1(b).

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1       Under Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading only with  
2 the opposing party’s written consent or the court’s leave.” The court should freely give leave to  
3 amend when “justice so requires.” *Id.* However, a court may deny leave to amend because of: (1)  
4 undue delay; (2) bad faith or dilatory motive by the movant; (3) repeated failure to cure deficiencies  
5 by amendments previously allowed; (4) undue prejudice to the opposing party; and (5) futility of  
6 amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

7       The interests of justice support granting Winnebago’s motion. However, Lippert argues that  
8 two factors weigh against granting leave to amend: (1) undue delay and (2) undue prejudice to  
9 Lippert.

10      First, Lippert argues that Winnebago waited over four months after Lippert was added as a  
11 defendant to file its motion, which constitutes undue delay. Delay is not a dispositive factor in the  
12 amendment analysis. *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th  
13 Cir. 1999). It is relevant, however, especially when no reason is given for the delay. *Id.*  
14 Winnebago explains that it did not file the motion earlier because it was negotiating with Lippert in  
15 an attempt to resolve the dispute without resorting to litigation.

16      Second, Lippert argues that amendment of the cross-claim would prejudice Lippert. The fact  
17 discovery cut-off date was August 22, 2014, while the present motion was noticed for a hearing on  
18 September 9, 2014. Lippert argues that because fact discovery has ended, it will be unable to  
19 conduct the necessary discovery as to Winnebago’s proposed cross-claims. Lippert argues that this  
20 warrants denial of the motion, and requests in the alternative that the Court continue the current case  
21 deadlines in order to give Lippert adequate time to respond to Winnebago’s cross-claims and  
22 conduct discovery. Winnebago does not object to continuing the discovery cut-off date.<sup>1</sup>

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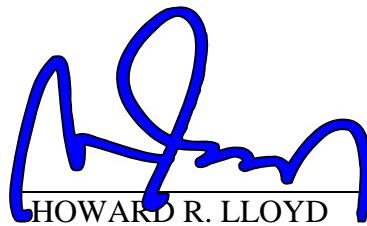
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<sup>1</sup> Plaintiff filed a limited opposition to the motion, opposing the motion only to the extent that it would cause a continuance of the final pretrial conference.

1 Accordingly, Winnebago's Motion for Leave to Amend Cross-Claim is granted. To prevent  
2 any undue prejudice to Lippert, the fact discovery cut-off deadline is extended to **September 30,**  
3 **2014.**

4 **IT IS SO ORDERED.**

5 Dated: September 4, 2014



6 HOWARD R. LLOYD  
7 UNITED STATES MAGISTRATE JUDGE  
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8      **Counsel are responsible for distributing copies of this document to co-counsel who have not  
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